Supreme Court, U.S.
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No. 01-1823

In the Supreme Court of the United States

GOVERNOR MARK S. SCHWEIKER, ET AL.,
Appellants

v.

RICHARD VIETH, ET AL.,
Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

BRIEF OPPOSING MOTION TO AFFIRM

D. MICHAEL FISHER
Attorney General
Commonwealth of Pennsylvania

JOHN G. KNORR, III
Chief Deputy Attorney General
Counsel of Record

J. BART DELONE
Senior Deputy Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-1144

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462 U.S. 725 (1983) 2

ARGUMENT

The District Court's Findings of Fact, That the Population Variances in Pennsylvania's Redistricting Plan Were Necessary to Further a Legitimate State Interest, Make it Clear That its Decision Is Incorrect.

Appellees, rather than defending the legal errors which we identified in the District Court's one person, one vote analysis, *see* J.S. at 8-14, instead suggest that we are attacking the District Court's findings of fact. Mot. to Aff. at 15-18. They are incorrect. Far from attacking the District Court's findings, we believe that those findings make it clear that the District Court's decision is incorrect, and compel its reversal. According to the appellees, the District Court found that "the sole proffered justification [for the nineteen-person population variance] was without factual support." Mot. to Aff. at 15. The District Court, however, found exactly the opposite.

The District Court specifically found that "the desire to avoid splitting precincts is a legitimate state interest which could justify a nineteen person deviation." J.S. App. 8a-9a. Moreover, the District Court unanimously acknowledged that the nineteen person variance was necessary to avoid further precinct splits. J.S. App. 10a (acknowledging that Act 1's zero deviation "twin" splits more precincts than Act 1); *accord* J.S. App. 18a (Yohn, J. dissenting) ("Neither party, even with the benefit of hindsight submitted a plan following the general contours of Act 1 which has not involved the spreading of more voting precincts").

The District Court majority rejected this justification not, as appellees now suggest, because it lacked factual support, but on the basis of a flawed legal analysis, marked by a lack of deference to state "goals,

policies and preferences," J.S. App. 18a (Yohn, J., dissenting), and by an excursion into questions of legislative motive which are wholly extraneous to the one person, one vote issue. We have already explained the shortcomings of the District Court's analysis in detail, *see* J.S. at 8-14, and will not repeat that material here. It is enough to say that the District Court, misunderstanding and misapplying *Karcher v. Daggett*, 462 U.S. 725 (1983), erroneously invalidated Pennsylvania's redistricting statute *despite* finding that its minimal population variances were necessary to further a legitimate state interest.

CONCLUSION

The Court should summarily reverse the district court's order, or in the alternative should note probable jurisdiction and set this appeal for plenary consideration.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General
Commonwealth of Pennsylvania

JOHN G. KNORR, III
Chief Deputy General
Counsel of Record

J. BART DELONE
Senior Deputy Attorney General

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 787-1144

Counsel for Appellants

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